

ESTTA Tracking number: **ESTTA708531**

Filing date: **11/13/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213057
Party	Plaintiff Hybrid Athletics, LLC
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Submission	Testimony For Plaintiff
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Signature	/Michael J. Kosma/
Date	11/13/2015
Attachments	Leydon Not of Filing.pdf(200743 bytes) Jason Leydon.pdf(114747 bytes) Leydon Depo Exhibits.pdf(4910224 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HYBRID ATHLETICS, LLC,	:	
	:	
Opposer,	:	Opposition No. 91213057
	:	
v.	:	
	:	
HYLETE LLC,	:	
	:	
Applicant.	:	

OPPOSER'S NOTICE OF FILING LEYDON TRIAL TESTIMONY

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123(h) and 2.125(c),
Opposer files herewith the following:

- 1) A true copy of the transcript of the testimony deposition of Jason Leydon, taken on September 4, 2015, and all exhibits thereto.

Respectfully submitted,

HYBRID ATHLETICS, LLC

November 13, 2015

/s/ Michael J. Kosma

Michael J. Kosma
Christina L. Winsor
Whitmyer IP Group LLC
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing OPPOSER'S NOTICE OF FILING LEYDON TRIAL TESTIMONY was served by first class mail, postage prepaid on the Correspondent for the Applicant at the below address. This is to further certify that a true copy of the testimony deposition, taken on September 4, 2015, of Jason Leydon and all exhibits thereto were served upon Correspondent for the Applicant via FedEx overnight delivery on September 24, 2015.

Kyriacos Tsircou
Tsircou Law, P.C.
515 S. Flower Street, Floor 36
Los Angeles, CA 90071-2221

November 13, 2015
Date

/s/ Joan M. Burnett
Joan M. Burnett

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

-against-

HYLETE LLC,

Opposition
No.
91213057

Applicant.

DEPOSITION OF JASON LEYDON

September 4, 2015

Reported by:

Joseph Danyo V

Job No. 14810

September 4, 2015
10:00 a.m.

Deposition of JASON LEYDON, taken by Opposer,
held at the offices of Whitmyer IP Group,
600 Summer Street, Stamford, Connecticut,
before Joseph Danyo V, a Shorthand Reporter
and Notary Public within and for the State
of New York.

A P P E A R A N C E S :

WHITMYER IP GROUP

Attorneys for Opposer

600 Summer Street

Stamford, Connecticut 06901

By: MICHAEL J. KOSMA, ESQ.

mkosma@whpgroup.com

TSIRCOU INTELLECTUAL PROPERTY LAW

Attorneys for Applicant

515 South Flower Street

36th Floor

Los Angeles, California 90021

By: JOHN M. BEGAKIS, ESQ.

johnbegakis@tsircoulaw.com

~oOo~

1 Leydon

2 J A S O N L E Y D O N, having been first duly
3 sworn by Joseph Danyo V, a Notary Public, was
4 examined and testified as follows:

5 MR. KOSMA: Before we start, I just
6 want to put on the record that the parties
7 for all the depositions are going to agree
8 to waive signature before a person
9 authorized to administer oaths and the
10 sealing of the evidence by the officer for
11 all the depositions.

12 MR. BEGAKIS: That's fine.

13 EXAMINATION BY MR. KOSMA:

14 Q. Mr. Leydon, I am Michael Kosma, an
15 attorney from the Whitmyer IP Group, and I
16 represent Hybrid Athletics in an opposition
17 against Hylete. This is a deposition which I
18 will ask you questions and you must answer them
19 truthfully.

20 Although no judge is present, this is
21 a formal, legal proceeding, just like testifying
22 in court, and you are under the same legal
23 obligation to tell the truth, the whole truth and
24 nothing but the truth.

25 If you do not understand any of my

1 Leydon

2 questions, please feel free to say so and I'll
3 repeat or rephrase them.

4 Before the deposition can be used in
5 court, you will have the opportunity to read it
6 over and correct any mistakes?

7 Do you understand this?

8 A. Yes.

9 Q. Can you please state for the record
10 your name.

11 A. Jason Leydon.

12 Q. Where do you live?

13 A. Milford, Connecticut.

14 Q. How old are you?

15 A. 35.

16 Q. What is your current job?

17 A. I am the owner and head coach of
18 CrossFit Milford.

19 Q. How long have you owned CrossFit
20 Milford?

21 A. About eight and a half, nine years.
22 November 2008.

23 Q. And --

24 A. That was the startup date.

25 Q. And before owning CrossFit Milford,

1 Leydon

2 where did you work?

3 A. I worked at Barnum Financial Group
4 for about a year. Before that, I was a
5 basketball player overseas in Holland. And then
6 there was college before that, so physical
7 education and health.

8 Q. Where did you go to college?

9 A. Springfield College for a year and
10 a half. Then Eastern Connecticut State
11 University.

12 Q. What's your degree in?

13 A. Physical education and health.

14 Q. When did you first hear about
15 CrossFit?

16 MR. BEGAKIS: Objection. Calls for
17 narrative.

18 A. First heard about CrossFit in 2007,
19 so when I got out of the -- when I stopped doing
20 the financial industry, I opened up my training
21 studio in Milford, and it was personal training.
22 Around 2007 is when I heard about CrossFit, and
23 then I started going to the seminars and changed
24 my gym over to CrossFit Milford.

25 Q. What was the name of your gym before

Leydon

that?

A. The Underground.

Q. Where is that located? In Milford?

A. Milford, Connecticut.

Q. At CrossFit Milford right now, about how many members do you have?

A. About 500.

Q. Besides owning a CrossFit gym, do you do any work for CrossFit?

A. Yes. So when I got into CrossFit, from like 2009 to 2011, I worked for CrossFit Endurance coaching those seminars, traveling all over the U.S., doing about one a month, so anywhere from Cali to Texas to Detroit to Florida to New Hampshire and all over the place.

Then from there, I started working with CrossFit coaching the level 1 seminars. I did that for about two, two and a half years. Again, more travel.

Q. What year was that?

A. That was about 2011 through about 2013 to '14. And then from there, I started doing my own seminars where I travel all over the U.S. Cali, Chicago, Florida, yes. So all over

1 Leydon

2 the place.

3 Q. You mentioned CrossFit Endurance.

4 A. Correct.

5 Q. What is CrossFit Endurance?

6 A. So within CrossFit there's different
7 what they call SME, subject matter experts. They
8 have that for Strong Man, which is Rob. They
9 have CrossFit Endurance. They have
10 weightlifting, which is their powerlifting and
11 gymnastics.

12 So CrossFit Endurance is just another
13 specialty seminar for CrossFit where they teach
14 people how to run correctly, training zones,
15 training parameters for running and endurance
16 training.

17 Q. And approximately how many people
18 attend these seminars?

19 MR. BEGAKIS: Objection.

20 Speculation. Calls for speculation.

21 A. Anywhere from ten to 20. With inside
22 the CrossFit level 1 seminars, I've been working
23 for those, that's about 40 to 60, and with my own
24 seminars it's about 15 to 20.

25 Q. What is a CrossFit level 1 seminar?

Leydon

A. CrossFit level 1 seminar is where attendees will go to attend a two-day CrossFit course, getting the basic foundations and philosophies of CrossFit, the methodology of training, parameters, requirements, the hows, the whats and the whys.

Q. What does it mean to have a CrossFit level 1 certification?

A. So it means you pretty much did a two-day course for CrossFit and you understand the basic foundations and principles of CrossFit.

Q. What CrossFit certificates do you have?

A. All of them.

Q. Can you name a few?

A. Sorry. So CrossFit weightlifting, CrossFit level 2, CrossFit powerlifting, gymnastics, endurance. All the CrossFit 1's. Kettle bell, rowing, science of exercise.

Q. It's like a memory test. There's a lot of them.

A. Yes.

Q. So do you participate in any CrossFit

Leydon

events?

A. Yes. There's a lot of CrossFit events, so right now we pretty much segued just the major events, so CrossFit Games, CrossFit Opens, CrossFit regionals, and then some of the bigger events that are held in Florida and California, they have names, Clouseau, OC Throw Down, the ECC, East Coast Championships. So those are the major events where you get people from all over the world coming in.

Obviously the CrossFit Games is the Olympics of CrossFit, so it's the biggest event held out in California, so those events I would have to say.

Q. How does CrossFit Milford participate in those events?

MR. BEGAKIS: Objection. Calls for narrative.

A. We win. I just want that on the record. No.

MR. BEGAKIS: Fair.

A. Whether it's individual athletes or team is how we compete in those.

Q. Okay.

1 Leydon

2 A. Was that the question?

3 Q. So CrossFit Milford sends individual
4 athletes or teams to these events?

5 A. Yes.

6 MR. BEGAKIS: Objection. Leading the
7 witness.

8 Q. Between 2009 and 2012 did CrossFit
9 Milford have participants in the east regionals?

10 A. Yes.

11 Q. In each one of those?

12 A. Each year?

13 Q. Yes.

14 A. Correct. Each year, yes.

15 Q. Did you attend each of the regionals?

16 A. Yes. I'm at all the regionals and
17 games.

18 Q. Just Northeast regionals or do you
19 travel around the country and go to all the
20 regionals?

21 A. Depends on the athletes I have. This
22 year I was at Mid-Atlantic and the east regional.
23 The previous years, just the east regional.

24 Q. Okay. 2009 did you attend any
25 regionals?

1 Leydon

2 A. Yes. I think -- I don't know the
3 exact year. There was one year when CrossFit
4 first switched to almost like a preliminary event
5 for the CrossFit Games where they had a sectional
6 and then a regional, so I was in charge of
7 running the sectional. I can't give you the
8 exact years. Either 2009 or 2010 that we did
9 that.

10 Q. Did you ever personally compete?

11 A. Yes.

12 Q. What years?

13 A. 2008, 2009, 2010, 2011, 2012.

14 Q. In the regionals and in the games?

15 A. Just regionals. Games in 2009 and
16 2010.

17 Q. Did you place in 2009, 2010?

18 A. Well, place, being top three or top
19 40? Top 40, yes. There are only 40 people.

20 Q. What is a CrossFit community like?

21 MR. BEGAKIS: Objection. Calls for
22 narrative.

23 A. CrossFit community is -- I think it's
24 just that, it's a community. It's one where
25 everyone knows everybody else, even as it

1 Leydon

2 continues to grow. It's very supportive and it's
3 fulfilling for everybody in it.

4 Q. How are you involved in the CrossFit
5 community?

6 MR. BEGAKIS: Objection. Calls for
7 narrative.

8 A. I coach a lot of athletes around the
9 world. We run our own facility. I coach people
10 from the business sense of owning a facility and
11 the operations of owning a gym. I do seminars,
12 so I work with athletes and other coaches on how
13 to be better athletes and coaches. I think
14 that's kind of my role right now.

15 Q. In CrossFit Milford, what do you sell
16 at CrossFit Milford?

17 A. Shirts, hats, sweatshirts, shorts,
18 pants, proteins, tape.

19 Q. Is it pretty common for gyms to sell
20 clothing?

21 A. Yes.

22 MR. BEGAKIS: Objection. Calls for
23 speculation.

24 A. I would think pretty much every gym
25 sells clothing.

1 Leydon

2 Q. And do you brand your clothing?

3 A. You try to, yes, because there are so
4 many facilities out there, so many facilities
5 with common names, for instance, like CrossFit
6 Milford, CrossFit Mayhem, CrossFit Marlsboro
7 can't all be CFM, right?

8 So I think a huge goal of many
9 facilities is to have a branded name,
10 one that's distinguishable and recognizable
11 around the world to have separation from the
12 other gyms.

13 Q. Do you know Rob Orlando?

14 A. Yes.

15 Q. How do you know Rob Orlando?

16 MR. BEGAKIS: Objection. Calls for
17 narrative.

18 A. Rob and I first met probably in 2007,
19 early 2008. We did an episode for Fox News.

20 Q. That was the first time you met Rob?

21 A. Yes. I mean we've bumped into each
22 other on the way, because back then it was a much
23 smaller community. There was maybe about five
24 gyms in Connecticut, so we all kind of knew
25 everybody.

1 Leydon

2 At that point, that's when we first
3 kind of really sat down and talked, but we've
4 talked before that, and then -- yes, that's kind
5 of how we met, and then we kind of started
6 training together, working together. I was
7 programing for him for the games, and we remained
8 good friends.

9 Q. What was the Fox News program about?

10 MR. BEGAKIS: Objection. Leading the
11 witness.

12 A. It was just some fitness program,
13 like quick fitness tips, something like that, one
14 of those kind of local broadcasts.

15 Q. You mentioned you did programing for
16 Rob. What do you mean by programing?

17 A. Helping train him for the CrossFit
18 Games, so putting down specific workouts and
19 intervals and work to do to get ready for it.

20 Q. What years was that?

21 A. That was maybe 2011, 2012, '13, I
22 think.

23 Q. Are you familiar with Mr. Orlando's
24 Hybrid Athletics brand?

25 MR. BEGAKIS: Objection. Leading the

1 Leydon

2 witness.

3 A. Yes.

4 Q. Are you familiar with his H trademark
5 or his H logo?

6 MR. BEGAKIS: Objection. Leading the
7 witness.

8 A. Yes.

9 (Exhibit 1, Hybrid H logo, was
10 received in evidence, as of this date.)

11 Q. Mr. Leydon, I've passed you what's
12 been marked as Exhibit 1 into evidence. Do you
13 recognize this?

14 A. Yes. That's the Hybrid H.

15 Q. And what is the Hybrid H?

16 MR. BEGAKIS: Objection. Calls for
17 narrative.

18 A. The Hybrid H is Rob's logo. It's
19 what he trademarked, kind of like his signifying
20 H to distinguish himself between all the other
21 gyms and put a specific brand to his name, I
22 guess.

23 Q. When did you first see the Hybrid H?

24 A. When he first came up with it really,
25 so maybe 2008, was it? I think when I -- because

1 Leydon

2 we were good friends, so when he first came up
3 with it, he showed it to me, showed me the ideas,
4 thought process, how he kind of came about it,
5 utilizing one of the yokes in his facility to
6 generate the H.

7 Q. And in between -- you mentioned you
8 did CrossFit Endurance 2009 to 2011?

9 A. Correct.

10 Q. In traveling for CrossFit Endurance,
11 did you see the Hybrid H?

12 MR. BEGAKIS: Objection. Leading the
13 witness.

14 A. Yes. That's probably one of the most
15 recognizable logos I think in the CrossFit world.
16 I feel like no matter where I go, especially back
17 then, when he first came about it, and when Rob
18 was at the CrossFit Games, tons of people had the
19 Hybrid H shirt, Hybrid Athletics shirt on with
20 the H as kind of like the emblem everywhere, and
21 I would always see that whether I was in
22 California or Texas or anywhere else, I always
23 bumped into people that had some sort of like the
24 Hybrid H shirt on.

25 Q. And in conducting your 1L or your

1 Leydon

2 CrossFit level 1 certifications, in 2012, 2013
3 did you see the Hybrid H logo around?

4 MR. BEGAKIS: Objection. Leading the
5 witness.

6 A. Yes. I see the Hybrid H everywhere.
7 Even to this day. Doing the level 1's, doing the
8 CrossFit running endurance seminars, through all
9 those years, this I think was probably the most
10 distinguishable logo in CrossFit.

11 No matter like where you went, people
12 would see it and knew that it was kind of like
13 Rob's logo. Like if I went somewhere with a CFM
14 shirt on, no one would know it was Milford. It
15 could be any other CrossFit tab or emblem. But
16 yes, that logo, that H is everywhere.

17 (Exhibits 2 and 3, Photographs of
18 Hybrid H logo in stone molds in gym, were
19 received in evidence, as of this date.)

20 Q. Mr. Leydon, I'm going to pass you
21 what's been marked as Exhibits 2 and 3 into
22 evidence. Looking at Exhibit 2, do you know what
23 this picture is of?

24 A. Hybrid H stone molds, Hybrid H in
25 those wall around his gym.

1 Leydon

2 Q. And Exhibit 3?

3 A. Hybrid H, more stones with the Hybrid
4 H in them.

5 Q. What are the stones?

6 MR. BEGAKIS: Objection. Calls for
7 narrative.

8 A. Stones are a Strong Man apparatus,
9 cement ball, weighing all different weights that
10 you can pick up and carry.

11 Q. The Hybrid stone molds, those all
12 have the Hybrid H logo in them, correct?

13 A. Yes. So Rob did a really good job
14 with branding and making his Hybrid H something
15 that's completely recognizable in all his stuff,
16 so whether it's his farmer's carries, yokes,
17 stones, all that stuff has an H imprinted in it.
18 So that's even something that you see or I would
19 see whenever I traveled to do seminars. People
20 would have stones or the yokes or the farmer's
21 carries. It would all be kind of -- signify with
22 the Hybrid H, so I would see that everywhere as
23 well.

24 (Exhibits 4 and 5, Photographs of
25 Hybrid Athletics T-shirt and JACO shorts,

1 Leydon

2 were received in evidence, as of this
3 date.)

4 Q. Mr. Leydon, I'm going to pass you
5 what's been marked as Exhibit 4 into evidence.
6 Do you recognize this picture?

7 A. Yes. It's the Hybrid H, Hybrid
8 Athletics T-shirt.

9 Q. Where have you seen that before?

10 A. Everywhere. One of Rob's T-shirts,
11 Revolutionizing Old School, logo on the back,
12 that's from -- I think this is his older T-shirt.
13 Maybe 2010 this was kind of created. Seen this
14 shirt everywhere, CrossFit Games, regionals,
15 regionals around the U.S.

16 Q. And you saw a T-shirt in, what years
17 did you say?

18 A. I mean I feel like --

19 Q. Between 2009 --

20 A. I think that's one of his first
21 T-shirts, so that had to have been like probably
22 2009 through -- I still see it being worn today.

23 Q. And I pass you what's been marked as
24 Exhibit 5 into evidence. Have you seen that
25 before?

1 Leydon

2 A. Yes. Absolutely. These are the JACO
3 shorts. Rob and I first got our gyms on the JACO
4 shorts back in like 2008, 2009 when JACO was
5 still around, so we had CrossFit Milford shorts
6 and then he did his Hybrid Athletics shorts
7 through JACO. So that's the Hybrid H on the JACO
8 shorts.

9 Q. And between 2009 and 2011 when you
10 were seeing Rob's H, where would you see it like
11 on --

12 MR. BEGAKIS: Objection. Leading the
13 witness.

14 Q. What kinds of items would you see it
15 on?

16 A. T-shirts, shorts, yokes, sleds,
17 farmer's, his wall, pants, hats, all the kind of
18 apparel line, and then all of his equipment.

19 Q. Are you familiar with Hylete?

20 A. Yes.

21 Q. How are you familiar with Hylete?

22 MR. BEGAKIS: Objection. Calls for
23 narrative.

24 A. When JACO separated, that's when
25 Hylete formed, so my exposure to Hylete in the

1 Leydon

2 beginning was our middle guy who worked for a
3 clothing distributor who first got us hooked up
4 with JACO, then came to us when JACO split up,
5 the two owners or partners, and Hylete formed to
6 get a logo on Hylete. So my first exposure to
7 Hylete was when we had the new shorts done by
8 them with our logo on them.

9 Q. When was that?

10 A. I think that was like right away when
11 Hylete formed, so whenever that was. That was, I
12 don't know, 2009 or '10 when Hylete first came
13 about, correct? '11? I don't know. One of
14 them.

15 (Exhibits 6 and 7, Hylete logo, were
16 received in evidence, as of this date.)

17 Q. Mr. Leydon, I'm going to pass you
18 what's been marked Exhibit 6 and 7 into evidence.
19 Do you recognize these exhibits?

20 A. Yes.

21 Q. And what is that?

22 A. This is the Hylete logo.

23 Q. What was your impression of the
24 Hylete logo when you first saw it?

25 MR. BEGAKIS: Objection. Calls for

1 Leydon

2 narrative and speculation.

3 A. I thought it looks a lot like the
4 Hybrid H. There was confusion. For myself, I
5 didn't see the Hylete H before I got the shorts
6 with my logo on it. When I did get it, I thought
7 that Rob had some sort of role in it because the
8 H's are similar.

9 MR. BEGAKIS: Objection.

10 Speculation.

11 A. When my wife got it -- when my wife
12 saw the shorts when we first got them, again she
13 thought that Rob had took on some sort of
14 clothing line because the H's were very similar.
15 So when I first saw the H, my initial impression
16 was that Rob was starting some new clothing line
17 and utilizing his current H and shipping it.

18 Q. When did you realize that Mr. Orlando
19 was not involved in the Hylete H?

20 A. When he told me. So I asked him, I
21 was like, hey, man, you sell shorts and not tell
22 me? He's like -- and he said, no, and then he --
23 so that's when I kind of realized.

24 Q. Besides you and your wife, have you
25 heard of any other confusion between the Hylete H

Leydon

and the Hybrid H?

MR. BEGAKIS: Objection. Leading the witness.

A. Yes. I feel like that's been ongoing. You see that a lot, a lot of confusion on it. I know my wife got confused a lot. my coaches all got confused when we got the shorts.

With inside our community, meaning CrossFit Milford, people kind of knew the back story behind it, but when I go outside of places, people are always confused with the Hylete H and the Hybrid H.

MR. BEGAKIS: Objection.
Speculation.

Q. Have you continued to do business with Hylete?

A. Say that again.

Q. Have you continued to do business with Hylete?

A. No.

MR. KOSMA: I have no more questions.

MR. BEGAKIS: I have just a couple.

EXAMINATION BY MR. BEGAKIS:

1 Leydon

2 Q. You said you don't do business with
3 Hylete anymore, correct?

4 A. Correct.

5 Q. When you said that wherever you
6 travel you'd see the Hybrid Athletics stones.

7 A. Yes.

8 Q. Do you see other stones in gyms,
9 stones not branded with the Hybrid Athletics H?

10 A. Yes.

11 Q. You own your own gym?

12 A. Correct.

13 Q. You see a lot of CrossFit athletes
14 come through your gym, correct?

15 A. Correct.

16 Q. You've competed, correct?

17 A. Correct.

18 Q. So you've seen athletes compete?

19 A. Correct.

20 Q. Have you ever seen any CrossFit
21 athletes wearing Under Armour?

22 A. Yes.

23 Q. Have you ever seen any CrossFit
24 athletes wearing Hurley?

25 A. Yes.

Leydon

MR. BEGAKIS: No further questions.

(Time noted: 10:41 a.m.)



JASON LEYDON

Subscribed and sworn to
before me this 3 day of Nov, 2015.

C E R T I F I C A T I O N

I, Joseph Danyo V, a Shorthand Reporter
and Notary Public, within and for the State of New
York, do hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not related,
by blood or marriage, to any of the parties in this
matter and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18 day of September, 2015.

Joseph Danyo V.

JOSEPH DANYO V

I N D E X

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JASON LEYDON	4

E X H I B I T S

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*** ERRATA SHEET ***
 TRANSPERFECT DEPOSITION SERVICES
 216 E. 45th Street, Suite #903
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 (212) 400-8845

CASE: Hybrid Athletics, LLC v. Hylete LLC LLC,
 DATE: September 4, 2015
 WITNESS: JASON LEYDON REF: 14810

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 JASON LEYDON

Subscribed and sworn to before me
 this ____ day of _____, 20__.

 Notary Public

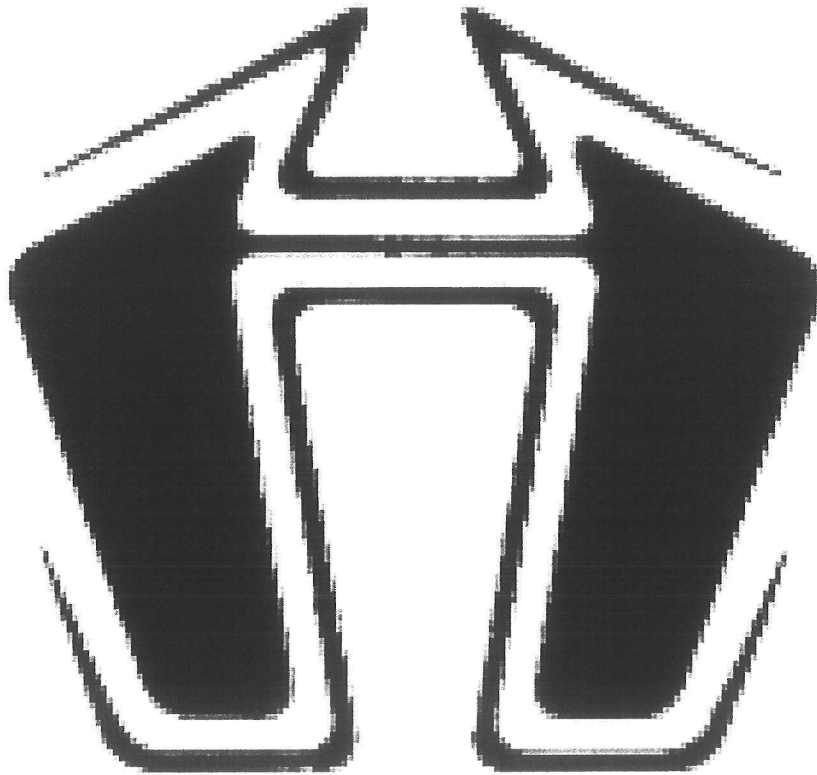
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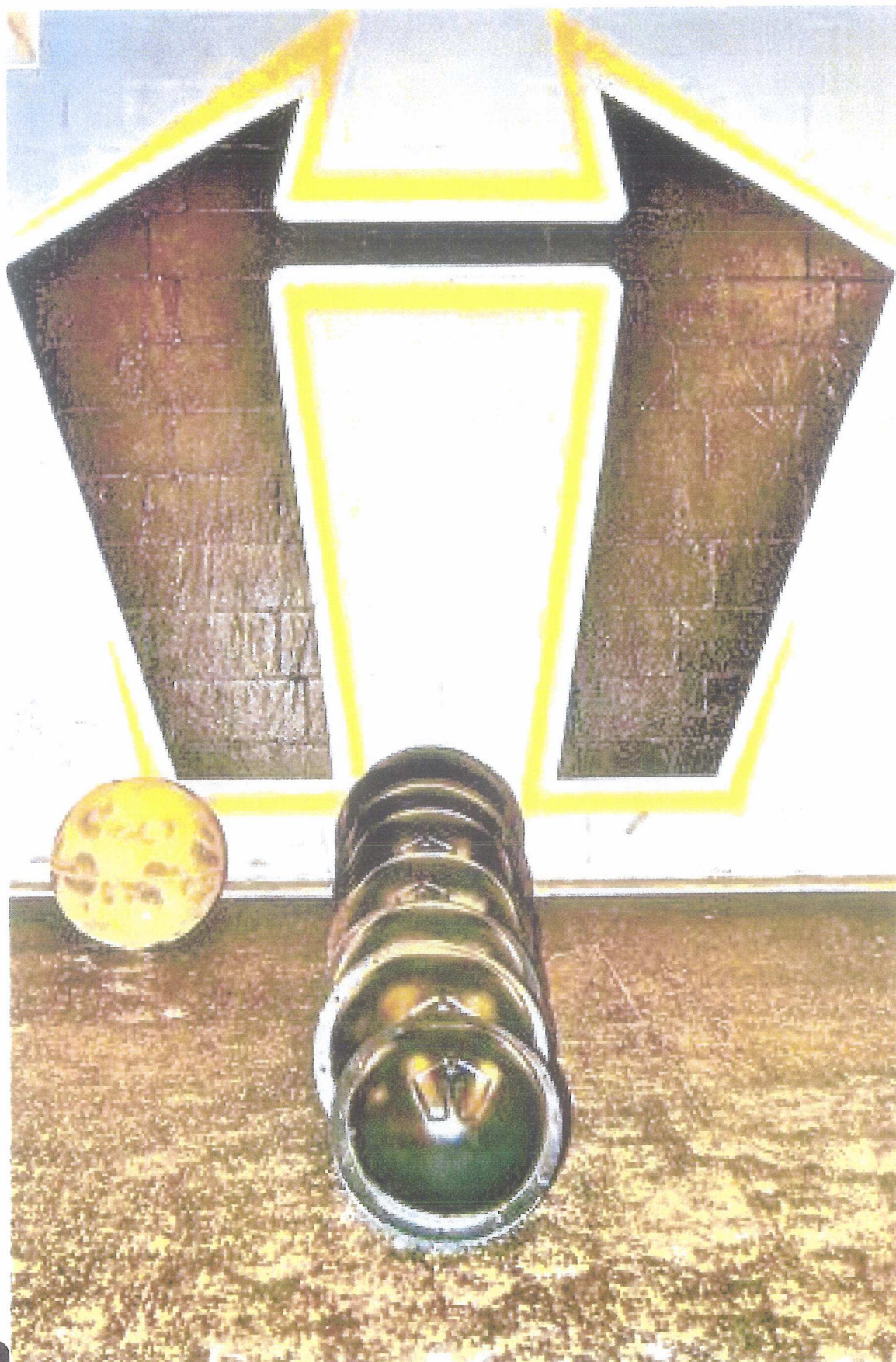
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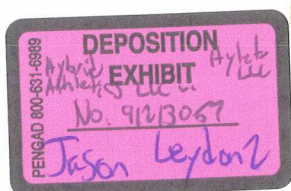
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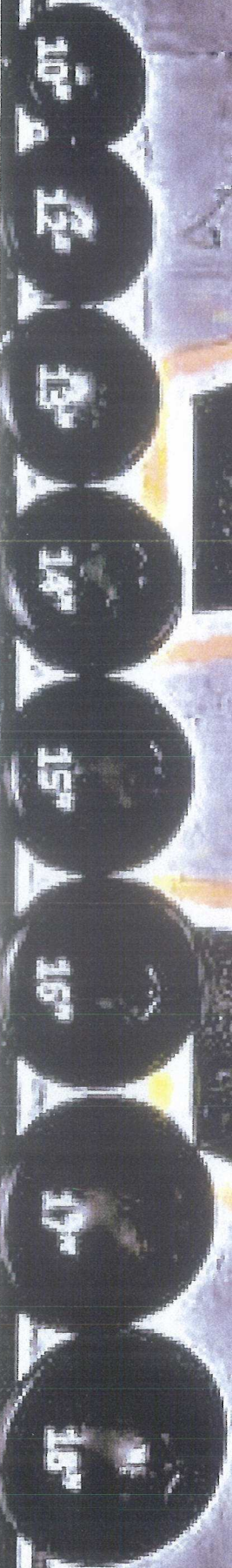
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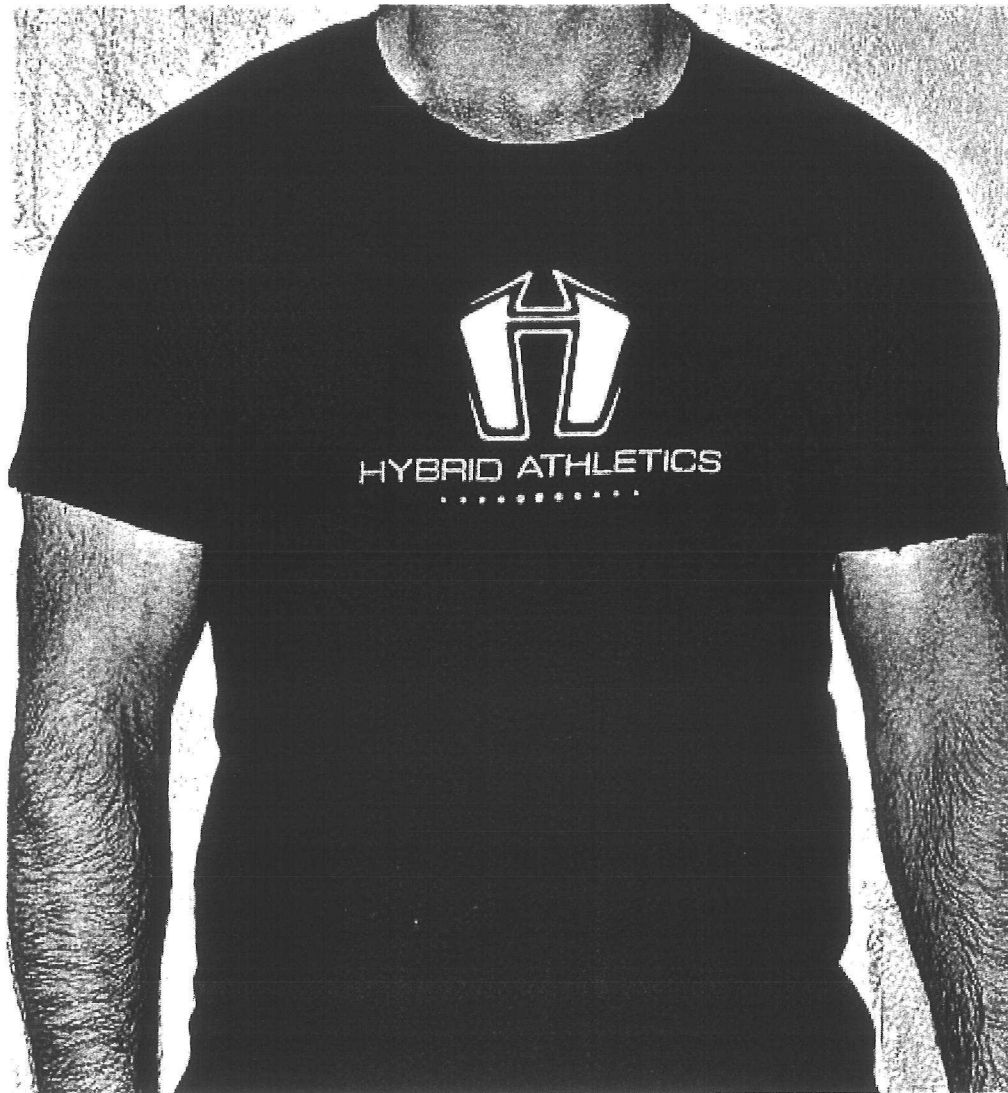
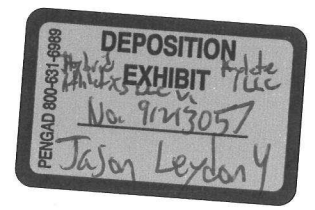
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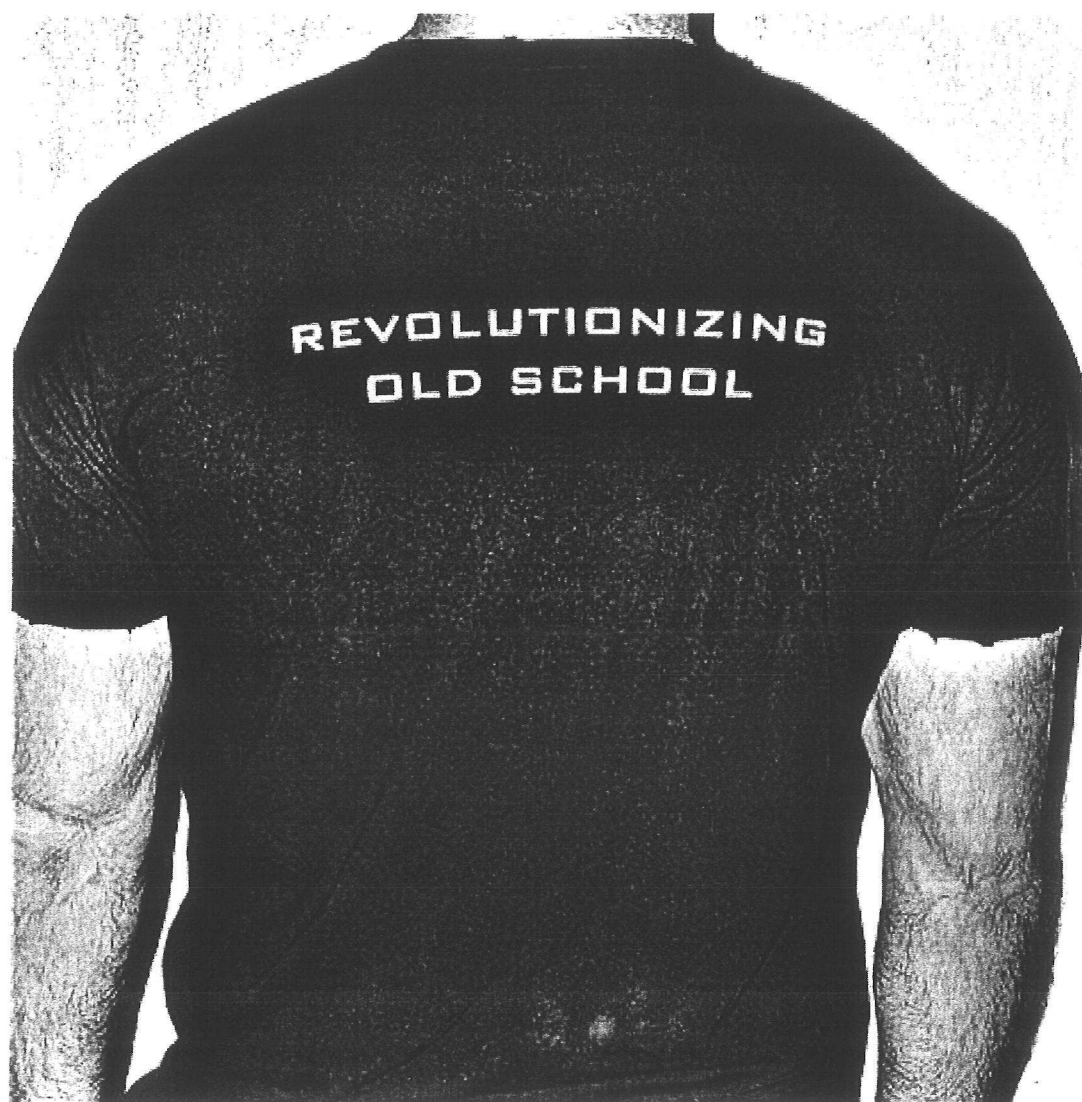
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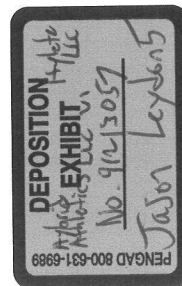
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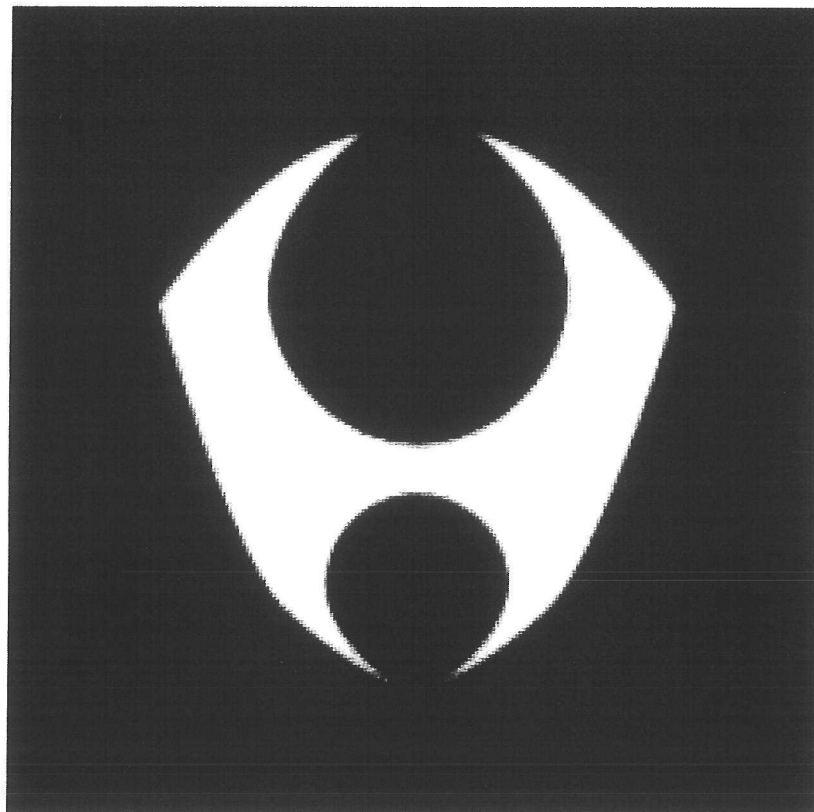
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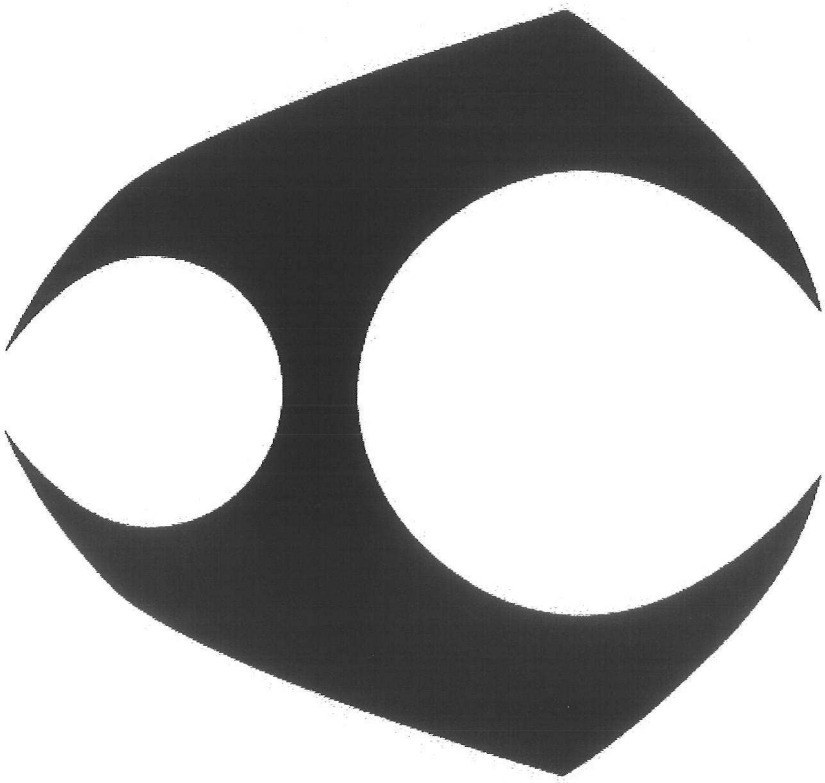
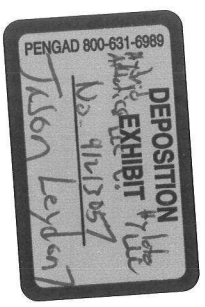




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